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No. 83-1386

IN THE
Supreme Court of the United States
OCTOBER TERM, 1983

HON. RONALD A. LEGGETT,
COLLECTOR OF REVENUE OF THE CITY OF ST. LOUIS,
HON. PAUL M. BERRA,
COMPTROLLER OF THE CITY OF ST. LOUIS,
and the CITY OF ST. LOUIS,
Petitioners,

v.

CRATON LIDDELL, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

---

BRIEF FOR THE STATE RESPONDENTS

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
STATEMENT	1
ARGUMENT	3
CONCLUSION	10

TABLE OF AUTHORITIES

CASES: Page

Delaware Valley Citizens' Council v. Commonwealth of Pennsylvania, 678 F.2d 470 (3d Cir. 1982) 9
Edelman v. Jordan, 415 U.S. 651 (1974) 6
Evans v. Buchanan, 582 F.2d 750 (3d Cir. 1978) 8, 10
Fair Assessment in Real Estate Ass'n v. McNary, 454 U.S. 100 (1981) 4
Great Lakes Dredge & Dock Co. v. Huffman, 319 U.S. 293 (1943) 4
Griffin v. School Board of Prince Edward County, 377 U.S. 218 (1964) 6, 7, 8
Louisiana ex rel. Hubert v. Mayor and Council of New Orleans, 215 U.S. 170 (1909) 7
Milliken v. Bradley, 433 U.S. 267 (1977) 7, 8
New York State Ass'n for Retarded Children v. Carey, 596 F.2d 27 (2d Cir. 1979) 8
New York State Ass'n. for Retarded Children v. Carey, 631 F.2d 162 (2d Cir. 1980) 7, 9
Plaquemines Parish School Board v. United States, 415 F.2d 817 (5th Cir. 1969) 6
Rees v. City of Watertown, 86 U.S. (19 Wall.) 107 (1874) 9
Rhem v. Malcolm, 507 F.2d 333 (2d Cir. 1974) 7
San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973) 4
United States v. Board of School Commissioners, 677 F.2d 1185 (7th Cir. 1982) 8, 9
United States v. County of Clark, 95 U.S. (5 Otto) 769 (1877) 7

STATUTES:

Mo. Rev. Stat. 164.013 (Proposition C) 2, 3

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BRIEF FOR THE STATE RESPONDENTS

STATEMENT

Respondent the State of Missouri is a defendant in the school integration proceedings that led petitioner the City of St. Louis to file the present petition for a writ of certiorari. As does the State in its own petition, *Missouri v. Liddell*, No. 83-1721, filed April 20, 1984, the City here seeks review of a February 8, 1984 decision of the *en banc* Eighth Circuit, which affirmed most aspects of a district court order approving an extraordinary new remedial plan. That plan, in turn, had been submitted to the district court by the plaintiffs and var-

ious school boards, including defendant the St. Louis School Board (the "City Board").[1]

The plan provides for large-scale voluntary transfers of thousands of pupils between St. Louis and suburban school districts, expanded "magnet schools," substantial changes to improve the quality of education in the St. Louis schools, and extensive capital improvements. The parties drafting the plan also agreed that the new remedies would be funded by "such combination of State funding and a tax rate increase in the City of St. Louis as shall be provided by the Court" (Pet. App. 129), and called on the court to enter such a funding order. (Pet. App. 125). Those parties specified that their obligations under the plan were contingent upon entry of a satisfactory order.

In approving the settlement, and imposing its terms upon the nonconsenting State, the court entered just such an order. The order required the State to pay 100 percent of many costs of the Settlement Plan, including the costs of transferring students and creating new magnet schools, and to bear 50 percent of the remaining costs. With regard to the share imposed upon the City Board, the court, in addition to calling for a capital bond issue, required the State to continue paying the Board the special sales tax distribution authorized by Mo. Rev. Stat. § 164.013 (Proposition C), even as it prohibited the Board from complying with the condition on Proposition C funds—lowering property taxes by 50 cents for every dollar received. (Pet. App. 38). The order went so far as to provide that the property taxes would be raised if necessary.

The court of appeals disapproved certain particulars of the district court order but made clear that similar, if not

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[1] The plan was styled as a settlement of certain pending "interdistrict" school segregation claims. The State and City Board had previously been found liable only with respect to "intradistrict" claims—*i.e.*, claims limited to the City of St. Louis.

identical, provisions could be entered on remand. It did, however, direct the district court to explore other options before insisting upon payment of Proposition C funds or requiring an increase in local property taxes. At the same time, it emphasized its "conviction that the district court's equitable power includes the remedial power to order tax increases or the issuance of bonds * * *." (Pet. App. 453).

ARGUMENT

In its own pending petition for certiorari (No. 83-1721), the State of Missouri has pointed to three aspects of the Eighth Circuit's decision that show very little regard for the proper limits on federal judicial intrusion into state and local affairs. First, the court upheld an order based upon a settlement plan and imposed it upon a nonsettling party without any findings or inquiry into its relation to the limited constitutional violation previously established. Second, the court approved multidistrict busing and magnet schools designed to provide integration unavailable within the district where the violation occurred, even though the racial distribution of students among the affected districts was in no way causally related to any constitutional violation. Third, the court largely affirmed an enormous quality education and rebuilding program despite the absence of any constitutional entitlement to such a program and despite the fact that any shortcomings in the St. Louis system resulted from neglect by the City Board and not from any prior condition of segregation. The result, as we noted, was a plan that simply rearranged state priorities at an unprecedented cost and without any grounding in defined constitutional rights or legitimate equitable powers.

In the present petition, the City of St. Louis emphasizes another improper aspect of the decisions below: the willingness of the district court and the Eighth Cir-

cuit to fashion court decrees that require the levying of specific state or local taxes. The State, as respondent here, urges the Court to grant the City's petition. Like the City, we believe that the Eighth Circuit's discussion of the taxation issue not only conflicts with the decisions of this Court and other circuits but creates the potential for serious judicial mischief in the guise of remedying constitutional violations.

This Court has repeatedly recognized that the prospect of a state tax system being rearranged through the orders of a federal court is offensive to our system of federalism. *See Fair Assessment in Real Estate Ass'n v. McNary*, 454 U.S. 100 (1981); *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973); *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293 (1943). The problem, in part, stems from the capacity of courts to undertake such a task. By its nature, the federal judiciary lacks "both the expertise and the familiarity with local problems so necessary to the making of wise decisions with respect to the raising and disposition of public revenues." *San Antonio Independent School District v. Rodriguez, supra*, 411 U.S. at 41. In addition, of all the areas of state decisionmaking, tax policies are among the most sensitive. "Interference with state internal economy and administration is inseparable from assaults in the federal courts on the validity of state taxation . . . ." *Great Lakes Dredge & Dock Co. v. Huffman, supra*, 319 U.S. at 298.

The courts below, however, showed no respect for such sovereign prerogatives. At the invitation of the City Board and other parties, and with full awareness that the Settlement Plan was contingent upon an order specifying the method of financing, the district court waded into the middle of the funding issue, imposing certain costs on the State, exempting the City Board and suburban boards from any share of those costs, directing the State to provide still other funds to the City

Board for its share of the costs despite noncompliance by the Board with state law, and, finally, telling the City Board that the court would order tax increases under particular circumstances. Furthermore, the district court undertook this venture without even addressing the interests of the City and State in satisfying the order through other means more consistent with state law and policies.

The court of appeals sought to repair some of the damage, but not enough. The court, for example, made no change at all in the forced apportionment of costs between the State and City Board, an arrangement involving a local subdivision that typically is within the power of a state to control. This intrusion is made even worse, both as a practical and a legal matter, by the decision to make the State liable for a wholly disproportionate share of the relief upon the apparent theory that the State had the deeper pocket.

The court of appeals' treatment of other funding issues is similarly at sea. Although it reversed portions of the order regarding the raising of funds by the City Board, requiring some sort of showing of necessity as a precondition, the terms of the remand raise the strong possibility of a repeat performance by the district court. For all its language about "exhaustion" of other "alternatives," the Eighth Circuit's discussion reaffirms the power of the district court to implement a particular taxation formula—including the very formula in the original district court order.[2] Moreover, it ignores a general principle recognized by this Court and many others: it is simply not appropriate for a federal court to prescribe for state or local legislative bodies the details of new measures to be undertaken to fund a federal

[2] The court specifically authorized reinstatement of the order in the event that the district court finds that "no other alternatives are available or sufficient to finance its desegregation order." (Pet. App. 473).

court decree. It is at that point that the federal courts cross the line separating permissible decrees from an impermissible intrusion into the exercise of state sovereignty.

It is well-recognized, of course, that a federal court may require a state to undertake affirmative relief even though it may have substantial impact on the state treasury. *Edelman v. Jordan*, 415 U.S. 651 (1974). Given that intrusion, it adds little for the court to say that the state must get the funds, by some undefined method, to pay for the relief. But it is one thing for a court to order the state to raise funds in a manner chosen by the state, quite another for the court to select and impose the means itself. In the latter case, the court has arrogated to itself perhaps the most important legislative power that a state possesses without assuming the political accountability otherwise inherent in that power. However convenient that shift may seem for the moment, it works a fundamental and undesirable change in the allocation of responsibility between state governments and the federal courts.

This Court has never countenanced any such shift in balance. Although the Court in *Griffin v. School Board of Prince Edward County*, 377 U.S. 218 (1964), remarked that "the District Court may, if necessary to prevent further racial discrimination, require the Supervisors to exercise the power that is theirs to levy taxes to raise funds adequate to reopen, operate, and maintain without racial discrimination a public school system" in the county, *id.* at 233, it was careful to authorize court-ordered taxation only if the facts showed it to be "necessary" to remedy the constitutional violation. More significantly, the Court did not even begin to authorize an order specifying a particular form of taxation. Instead, it would have left these details to be decided by the responsible authorities. *See Plaquemines Parish School Board v. United States*, 415 F.2d 817, 833 (5th Cir. 1969) (discussing *Griffin* and reversing a decree that

went beyond *Griffin* "as to the source, manner and controls accompanying the funds" to be raised).[3]

The same distinction was recognized even more clearly in a case quite comparable to the present one—*Milliken v. Bradley*, 433 U.S. 267 (1977) (*Milliken II*). In *Milliken II*, this Court approved a complex remedial decree in a school integration case. In so doing, however, it noted that the integration decree at issue had not "abrogated" the "principles of federalism" because it did not attempt "to restructure local government entities [or] *to mandate a particular method or structure of state or local financing.*" 433 U.S. at 291 (emphasis added).

Similar restraint is evident in the rulings of other circuits. These cases make it clear, first of all, that in most circumstances, federal courts should not even address the question of state funds to effectuate decrees. As the Second Circuit has put it, "a federal district court ought not to put itself 'in the difficult position of trying to enforce a direct order . . . to raise and allocate large sums of money . . . steps traditionally left to appropriate executive and legislative bodies responsible to the voters.' " *New York State Ass'n. for Retarded Children v. Carey*, 631 F.2d 162, 165 (2d Cir. 1980) (quoting *Rhem v. Malcolm*, 507 F.2d 333, 341 (2d Cir. 1974)). Instead, it should try to "defer[] to the state officials and legislature in the hope that they will meet their constitutional [funding] obligations by whatever means necessary and desirable." *New York State Ass'n for Retarded Children v. Carey*, 596 F.2d 27, 39 (2d Cir. 1979).

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[3] The majority below also relied on *Louisiana ex rel. Hubert v. Mayor and Council of New Orleans*, 215 U.S. 170 (1909). Yet there the tax in question had been specifically authorized by legislation, and the Court sought only to vindicate the existing statutory scheme. *Compare United States v. County of Clark*, 95 U.S. (5 Otto) 769 (1877) (barring a court order to require levying of a tax not authorized by the legislature).

But even if courts have been willing to take some steps towards requiring state or local funding of their orders, they have followed *Griffin* and *Milliken II* and drawn a second line: between a decree that mandates funding generally, and one that specifies the *details* of a new revenue-producing measure. Even if the former at some point could be justified, as a natural corollary of the power to order affirmative relief in the first place, it is "not the province of a federal court to instruct the legislature on *how* it should finance its obligations." *United States v. Board of School Commissioners*, 677 F.2d 1185, 1190 (7th Cir. 1982) (emphasis added). In school cases, for example, it has been held that a court must defer to any funding package devised by the legislature that promises to pay for court-ordered reforms—even a package that relies in part on cuts in those parts of the educational budget that are not constitutionally mandated. *Evans v. Buchanan*, 582 F.2d 750, 778-80 (3d Cir. 1978). As Judge Gibson put it in dissent below,

> The [funding] order should simply be in the form . . . to mandate that certain programs be carried out, and legislative bodies should be left with the responsibility for structuring the local or state taxing instrumentalities to achieve the result required. *The federal courts go too far in mandating specific taxing procedures.*

(Pet. App. 474) (emphasis added).

The reasoning underlying this rule is straightforward. While there may be a direct connection between the need to protect constitutional rights and the need to insist upon some assurance that funding is available, there is no corresponding link between the vindication of constitutional rights and any particular tax or funding scheme. On the contrary, in light of the dimensions of state and local programs, there will always be a variety of funding choices available, some of which will be more consistent than others with a particular state's fiscal goals and

policies. Moreover, without assuming a taxing power, the federal courts may resort to other enforcement tools to force a state to meet its constitutional obligations. *E.g., Delaware Valley Citizens' Council v. Commonwealth of Pennsylvania*, 678 F.2d 470, 476 (3d Cir. 1982) (state may be held in contempt where legislature fails to act); *New York State Ass'n for Retarded Children v. Carey*, *supra*, 631 F.2d at 165 (state has choice of remedying constitutional violations or closing facility).[4] At the very least, a federal court should explore these alternatives before supplanting legislative choice in the sensitive area of tax policy.[5]

It is thus not mere formalism to draw a line between ordering a state to raise funds to satisfy constitutional standards and actually selecting the means by which the funds must be raised. At the heart of state sovereignty is the power, and the concurrent obligation, to decide how much to tax and for what purpose. Even if the courts below were correct that the order in this case is necessary to provide plaintiffs with their constitutional rights, a proposition with which we vigorously disagree, it is still the province of the governmental bodies to elect whether to raise taxes or reduce other programs (including educational programs not essential to meet constitutional standards) and to choose what taxes to raise or what programs to cut. These principles apply with even greater force where, as here, the order is the product of a settlement agreement by which local school boards attempt to shift their own budgetary responsibilities to a nonconsenting state.[6]

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[4] *See also Rees v. City of Watertown*, 86 U.S. (19 Wall.) 107 (1874) (proper to compel city to levy tax through writ of mandamus; improper to appoint marshal to levy tax directly).

[5] The court of appeals in this case made no mention of such avenues, apparently assuming that the district court could order specific taxes at any point at which a shortfall in funding was detected.

[6] It was particularly inappropriate for the district court to assume that funds for the decree had to be an "*increment* to the

These issues are of unusual importance. Although the court of appeals made some effort to backtrack from the district-court order, its ultimate willingness to endorse the imposition of particular taxes makes an already intolerable order even more aberrant. Review by this Court, therefore, is appropriate.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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normal operating budget sufficient to meet desegregation needs." *Evans v. Buchanan, supra*, 582 F.2d at 779. There would be nothing constitutionally impermissible about a decision by defendants that some of the needed funds should come from cuts in areas of the school budget not covered by the substantive terms of the court's decree. *Id.* at 780.